

COUNCIL DECISION REQUEST

SUBJECT: Disciplinary Appeal of Employee Donald Garvin

MEETING DATE: December 9, 2010 PAYSON GOAL: NEW: EXISTING:
4:00 p.m. Special Meeting

ITEM NO.: TENTATIVE SCHEDULE:

SUBMITTED BY: Tim Wright, Town Attorney AMOUNT BUDGETED:

SUBMITTAL TO AGENDA EXPENDITURE REQUIRED:

APPROVED BY TOWN MANAGER

CONT. FUNDING REQUIRED:



EXHIBITS (If Applicable, To Be Attached):

Section 4.5 of the Town of Payson Personnel Manual

The following documents were provided to the Council confidentially. Pursuant to A.R.S. 38-1101, such documents are not available for public inspection until the conclusion of the appeal process, i.e., the Council's final decision.

Notice of Discipline – June 21, 2010

Appeal Letter – July 1, 2010

Findings and Recommendations of Hearing Officer R.O. McDaniel – November 10, 2010

POSSIBLE MOTION: Given the nature of this matter, Staff does not have a recommended Motion. Pursuant to Section 4.5.4 of the Town of Payson Personnel Manual, the Council "may affirm, reverse, or modify the 'Findings and Recommendations'" of the Personnel Hearing Officer.

SUMMARY OF THE BASIS FOR POSSIBLE MOTION: On June 21, 2010, Police Chief Don Engler issued a notice of discipline to then Lt. Donald Garvin. As a result of the discipline, Garvin was demoted to the rank of sergeant with the commensurate reduction in compensation. On July 1, 2010, attorney Martin Bihn, on behalf of Garvin, filed an appeal of the discipline.

On November 3, 2010, following several delays occasioned by the withdrawal of one attorney, various scheduling issues, and a family medical emergency, a Disciplinary Appeal Hearing (closed to the public) was held pursuant to Section 4.5.3 of the Town of Payson Personnel Manual. During the Hearing, the Town Personnel Hearing Officer took live testimony, reviewed stipulated evidence, and heard arguments from each side. On November 10, 2010, the Town Personnel Hearing Officer issued his Findings and Recommendations in this matter.

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The Personnel Hearing Officer's Findings and Recommendations are "advisory only" to the Town Council. See Section 4.5.3. The Council "may affirm, reverse, or modify the Findings and Recommendations." In order to proceed in an orderly manner and to afford Garvin a fair review in accordance with due process, Staff would suggest that the Council proceed with this matter as follows:

- I. Allow the Attorney who presented the matter for the Police Department to make a brief (10 minutes or less) statement of the Department's position.
- II. Allow Mr. Garvin's attorney to make a brief (10 minutes or less) statement of Mr. Garvin's position.
- III. Council discussion of the matter
- IV. Council decision. The Council's decision will take the form of a motion and subsequent vote. Staff is willing to assist with the wording of such motion if desired. Such a motion would follow one of the three general forms below:
 - (1) I move to Affirm the Findings and Recommendations of the Personnel Hearing Officer dated November 10, 2010 upholding the involuntary demotion of Donald Garvin to the position of Sergeant.
 - (2) I move to Reverse the Findings and Recommendations of the Personnel Hearing Officer dated November 10, 2010 and rescind the involuntary demotion of Donald Garvin to the position of Sergeant.
 - (3) I move to Modify the Findings and Recommendations of the Personnel Hearing Officer dated November 10, 2010 as follows:
 - 1) _____
 - 2) _____
 - 3) etc.

PROS: n/a

CONS: n/a

PUBLIC INPUT (if any): Given the nature of this matter (employee discipline), public input is inappropriate.

BOARD/COMMITTEE/COMMISSION ACTIONS/RECOMMENDATIONS (if any) (give dates and attach minutes): n/a

FUNDING:

Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:

3A: _____ Date: _____



TOWN OF PAYSON – PERSONNEL MANUAL

Grievance filing date; 3) Nature and date of the grievance; 4) Corrective action requested and reasons therefore; 5) Summary of efforts made to resolve the grievance informally; 6) Additional information pertinent to the grievance.

Employees whose complaint alleges a discriminatory practice should consult the Personnel Officer prior to filing the letter of grievance.

An employee who does not have regular status and is suspended pending termination or who has been terminated does not have a right to file a grievance.

If the employee grievance is based on a suspension or demotion, the Town Manager must, within ten working days, review the grievance and either make a written statement outlining the Town's position or refer the grievance to the Personnel Hearing Officer.

All other grievable matters will be appealable only as far as the Town Manager. The Town Manager or an appointed representative will, within ten working days, review the grievance and appeal, and the Town Manager will issue a written decision on the appeal. This decision shall be final.

4.5 - APPEAL PROCESS

4.5.1 - RIGHTS

Any employee with right of appeal shall have the right to appeal to the Personnel Hearing Officer all timely appeals related solely to any employment action resulting in termination, loss of pay, written reprimand, suspension, demotion, or probation related sanctions of regular employees.

Notwithstanding any other provision or procedure to the contrary, the following shall be afforded any regular full time employee entitled to a hearing under these rules. Seasonal and Temporary employees are not eligible.

- Written notice of the specific grounds for discipline.
- The disclosure of evidence supporting the discipline imposed.
- The opportunity to confront and cross-examine adverse witnesses called by the Town at a scheduled hearing.
- The opportunity to be heard in person and to present evidence at a scheduled hearing.
- The opportunity to be represented by counsel.
- A written statement by the Personnel Hearing Officer or other fact finders as to the evidence relied upon and the reasons for the determination made by it.

4.5.2 – REQUIRED NOTICE

An appeal may be taken by filing a written appeal within ten (10) calendar days after receiving notification of intended discipline. A verbal or oral appeal (not in writing), or a written appeal filed anywhere other than with the Town of Payson shall be invalid and of no force and effect.

Upon receipt of a written appeal, the Personnel Officer shall immediately inform the Town Council, Town Manager, Town Legal Department, the Personnel Hearing Officer and such other persons or officers named or affected by the appeal or the filing of same.

Form and content of appeal:

1. Shall be in writing
2. Shall be executed by the employee in the presence of a notary public, attesting that the appeal is made in good faith and upon the personal knowledge of the employee;
3. Shall be directed to the Personnel Hearing Officer in care of the Personnel Officer and shall be filed with the Town of Payson.
4. Shall clearly explain the matter to be appealed;
5. Shall set forth a statement of the action desired by the employee; and
6. Shall set forth the reasons for the action desired and requested by the employee.



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The appeal may be handwritten or typed and need not be in formal legal pleading form so long as it conforms to the requirements contained herein.

Upon receipt of an appeal, the Personnel Hearing Officer shall notify the Personnel Officer of the date set for a hearing on the appeal not less than ten (10) calendar days, nor more than thirty (30) calendar days from the date of receipt of the appeal.

The Personnel Officer shall provide written notice to all affected parties of the date, time and place of the hearing at such place as the Personnel Hearing Officer shall prescribe. In addition, notice shall be provided to the Town Manager and Town of Payson Legal Department. Proof of notice to all individuals shall be documented in the Town's records.

4.5.3 – HEARING PROCEDURES

The employee shall appear personally, unless physically unable to do so, before the Personnel Hearing Officer at the time and place scheduled for the hearing on appeal.

The employee may be represented by any person (other than the Personnel Hearing Officer) or attorney as the employee may select, and may present relevant oral or documentary evidence. However, in the event that the employee chooses to be represented by an attorney at the hearing, the employee must give notice, at least ten (10) calendar days prior to the hearing, to the Personnel Hearing Officer of his/her intention to be represented by an attorney at such hearing. In that event, the Personnel Hearing Officer shall immediately notify the Town of Payson Legal Department so that arrangements may be made for the Town to be represented by legal counsel at the hearing.

In the event the employee does not intend to be represented by an attorney at the hearing, the Town may be represented by the Personnel Hearing Officer or other employee or counsel chosen by the Town of Payson Legal Department.

The conduct of the hearing shall be directed by the Personnel Hearing Officer with due regard to the rights and privileges of the parties appearing before him/her, but need not be conducted in accordance with judicial rules of evidence. Each party shall be allowed to present evidence and cross-examine witnesses. The hearing shall be closed unless the employee requests in writing that the hearing be conducted in an open, public meeting forum.

The Personnel Hearing Officer shall, within ten (10) days after the conclusion of the hearing, render "Findings and Recommendations" to the Town Council.

Such "Findings and Recommendations" shall be in writing; shall describe the evidence relied upon by the Personnel Hearing Officer; shall state the reasons for the Personnel Hearing Officer's determination; and shall be advisory only to the Town Council.

Copies of such "Findings and Recommendations" shall also be provided to the affected parties, the Town of Payson, the Town Manager, and the Town of Payson Legal Department.

4.5.4 - COUNCIL ACTION

The Council shall review the Personnel Hearing Officer's "Findings and Recommendations" within thirty (30) days from the date of such "Findings and Recommendations" and may affirm, reverse, or modify the "Findings and Recommendations."

4.5.5 - STATUS OF TERMINATED EMPLOYEE PENDING APPEAL

A terminated employee shall not be permitted to occupy his/her position pending the appeal process.